

CORPORATE LITIGATION
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STATE OF MINNESOTA

COUNTY OF HENNEPIN

MAR 15 2019

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DISTRICT COURT

FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT

CM Construction Company, Inc.,

Case File No: _____

Plaintiff,

vs.

SUMMONS **SCANNED**

The Travelers Indemnity Company,

MAR 18 2019

Defendant.

CORPORATE LITIGATION

THIS SUMMONS IS DIRECTED TO DEFENDANT, ABOVE-NAMED:

1. **YOU ARE BEING SUED.** The Plaintiff has started a lawsuit against you. The Plaintiff's Complaint against you is attached to this Summons. Do not throw these papers away. They are official papers that affect your rights. You must respond to this lawsuit even though it may not yet be filed with the Court and there may be no court file number on this Summons.

2. **YOU MUST REPLY WITHIN 20 DAYS TO PROTECT YOUR RIGHTS.** You must give or mail to the person who signed this Summons a written response called an Answer within 20 days of the date on which you received this Summons. You must send a copy of your Answer to the person who signed this Summons located at:

Hugh D. Brown
Fabyanske, Westra, Hart & Thomson, P.A.
333 S. 7th St., Suite 2600
Minneapolis, MN 55402

3. **YOU MUST RESPOND TO EACH CLAIM.** The Answer is your written response to the Plaintiff's Complaint. In your Answer you must state whether you agree or disagree with each paragraph of the Complaint. If you believe the Plaintiff should not be given everything asked for in the Complaint, you must say so in your Answer.

4. **YOU WILL LOSE YOUR CASE IF YOU DO NOT SEND A WRITTEN RESPONSE TO THE COMPLAINT TO THE PERSON WHO SIGNED THIS SUMMONS.** If you do not Answer within 20 days, you will lose this case. You will not get to tell your side of the story, and the Court may decide against you and award the Plaintiff everything asked for in the complaint. If you do not want to contest the claims stated in the complaint, you do not need to respond. A default judgment can then be entered against you for the relief requested in the complaint.

5. **LEGAL ASSISTANCE.** You may wish to get legal help from a lawyer. If you do not have a lawyer, the Court Administrator may have information about places where you can get legal assistance. Even if you cannot get legal help, you must still provide a written Answer to protect your rights or you may lose the case.

6. **ALTERNATIVE DISPUTE RESOLUTION.** The parties may agree to or be ordered to participate in an alternative dispute resolution process under Rule 114 of the Minnesota General Rules of Practice. You must still send your written response to the Complaint even if you expect to use alternative means of resolving this dispute.

Dated: March 15, 2019

By:

**FABYANSKE, WESTRA, HART & THOMSON,
P.A.**



Hugh D. Brown (#0390969)

hbrown@fwhtlaw.com

Elise R. Radaj (#0397650)

eradaj@fwhtlaw.com

333 South Seventh Street, Suite 2600

Minneapolis, MN 55402

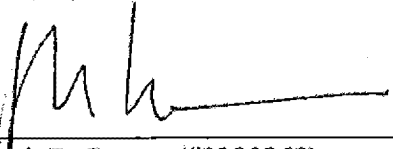
(612) 359-7600 (P)

(612) 359-7602 (F)

**ATTORNEYS FOR CM CONSTRUCTION
COMPANY, INC.**

ACKNOWLEDGMENT

I acknowledge that costs, disbursements and reasonable attorney and witness fees may be awarded under Minn. Stat. § 549.211, to the party against whom the allegations in this pleading are asserted.



Hugh D. Brown (#0390969)

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

CASE TYPE: CONTRACT

CM Construction Company, Inc.,

Case File No: _____

Plaintiff,

vs.

COMPLAINT

The Travelers Indemnity Company,

Defendant.

Plaintiff CM Construction Company, Inc. ("CMC"), for its Complaint against Defendant The Travelers Indemnity Company ("Travelers"), states:

PARTIES

1. CMC is a Minnesota corporation and construction contractor, with its principal place of business in Burnsville, Minnesota.

2. Travelers is a foreign insurance company authorized to do business in Minnesota.

JURISDICTION AND VENUE

3. The Court has jurisdiction over the parties and the subject matter of this proceeding under Minn. Stat. § 484.01.

4. Venue is proper in Hennepin County under Minn. Stat. § 542.09.

FACTS

5. This action arises out of the construction of the Minnesota Army National Guard Readiness Center in Stillwater, Minnesota (the "Project").

6. CMC, as general contractor, entered into a contract (the "Contract") with the State of Minnesota, Department of Military Affairs (the "State"), as owner, for construction of the Project.

7. CMC subsequently entered into a subcontract with Cobalt Excavating Inc. d/b/a Cobalt Contracting Inc. ("Cobalt") on or about October 15, 2014 (the "Subcontract") in which Cobalt agreed to perform certain excavation and erosion control work, among other things, on the Project.

8. The Subcontract required Cobalt to obtain, maintain and pay for insurance, and to name CMC as an Additional Insured.

9. Cobalt obtained insurance from Travelers in an insurance policy identified as Policy Number DT-CO-4E75667A-IND-14 (the "Policy").

10. CMC is an Additional Insured under the Policy.

11. On or about February 8, 2018 CMC commenced a lawsuit against the State in a matter captioned *CM Construction Company, Inc. v. State of Minnesota, Department of Military Affairs*, Case No. 27-CV-18-861 (the "Underlying Lawsuit") currently pending in the Minnesota District Court, Ramsey County.

12. On or about March 19, 2018, the State counterclaimed against CMC in the Underlying Lawsuit. A true and correct copy of the State's Counterclaim in the Underlying Lawsuit is attached and incorporated herein as **Exhibit A**.

13. The State's claims against CMC in the Underlying Lawsuit, in part, arise out of and are related to Cobalt's work on the Project. Among other claims, the State alleges and seeks to recover from CMC for the following claims and damages arising out of Cobalt's work on the Project:

- a. The State alleges CMC over-excavated the hole for the infiltration basin and failed to correct it;
- b. The States alleges CMC failed to make soil amendments in the required amounts.

14. CMC timely tendered defense and indemnification of the claims to Travelers.

15. The claims asserted against CMC are covered by the Policy. Accordingly, Travelers is obligated to defend and indemnify CMC, as an Additional Insured, for the claims asserted against CMC.

16. Travelers has refused CMC's tender, and has failed to provide CMC a defense in the Underlying Action.

17. As a result of Traveler's refusal to defend and indemnify CMC against the claims, CMC incurred and continues to incur damages, including substantial costs, disbursements, and attorney's fees to defend itself in the Underlying Litigation and to prosecute this lawsuit.

COUNT I
(Declaratory Judgment)

18. CMC restates and incorporates by reference the preceding allegations as if set forth fully herein.

19. Pursuant to Minn. Stat. § 555.01, *et seq.* CMC is entitled to a judgment declaring that:

- a. The claims asserted against CMC by the State were covered under the terms of the Policy;
- b. Travelers was and is obligated under the Policy to defend and indemnify CMC from and against the claims asserted against CMC by the State; and

- c. Travelers is liable to CMC for all damages CMC incurred, and will continue to incur, as a result of Traveler's wrongful refusal to defend and indemnify CMC, including without limitation all damages, costs, and attorney's fees incurred in connection with the Underlying Lawsuit and this lawsuit.

WHEREFORE, Plaintiff CM Construction Company, Inc. respectfully requests the following relief from the Court:

1. A declaration that:
 - a. The claims asserted against CMC by the State were covered under the terms of the Policy;
 - b. Travelers was and is obligated under the Policy to defend and indemnify CMC from and against the claims asserted against CMC by the State; and
 - c. Travelers is liable to CMC for all damages CMC incurred, and will continue to incur, as a result of Traveler's wrongful refusal to defend and indemnify CMC, including without limitation all damages, costs, and attorney's fees incurred in connection with the Underlying Lawsuit and this lawsuit.
2. Awarding CMC all of its costs and disbursements incurred herein, including attorney's fees; and

3. Awarding any other relief the Court deems just and appropriate.

**FABYANSKE, WESTRA, HART &
THOMSON, P.A.**

Dated: March 15, 2019

By: 

Hugh D. Brown (#0390969)

hbrown@fwhtlaw.com

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Hugh D. Brown (#0390969)